IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5533 of 1999
WITH
CIVIL APPLICATION No. 6506 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAMNADAS SHANKERBHAI SURTI
Versus
MUNICIPAL CORPORATION OF CITY OF SURAT

Appearance:
1. Special Civil Application No. 5533 of 1999
MR KK TRIVEDI for Petitioner No. 1
MR PRASHANT G DESAI for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2/1-6

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 12/09/2001

ORAL JUDGEMENT

1. The petitioners who claim to be the joint tenants of survey no. 214/9, reconstituted as Block No. 384 of village Dindoli (Ishwarpura), Taluka Choryasi, District: Surat, have filed this petition for an appropriate writ,

order or direction, directing the respondent no.1 i.e. Surat Municipal Corporation not to develop the land in question and not to enter upon the said land by depriving the petitioners of their possession till their rights are decided by the Civil Court.

2. This Court, on 12.8.1999, issued Rule in the matter. By way of interim relief, it was directed that the respondent- Corporation and the trustees of Shri Kadva Patidar Kanbi Trust shall not make any further construction upon survey no. 214 (Block No. 384) of village Dindoli by acting upon any private agreement between the parties. It was clarified that it shall be open to the Corporation to acquire land under the Land Acquisition Act as per Resolution No. 038/98 passed by the Standing Committee of respondent Corporation on 25.6.1998.The respondent Corporation filed an application being Civil Application No. 6506 of 2001 for vacating the said interim relief by contending that the land in question is shown under reservation in the revised draft plan for health and district center and the said reservation is for the purpose of the Corporation. The Corporation has decided to acquire the land for the abovesaid purpose and also for the purpose of putting up school in small part of the land and had also negotiated with respondent no.2 Trust. The said trust had agreed to give the land in question to the Corporation in lieu of handing over land owned by the trust and the Standing Committee had also accepted the said proposal by resolution dated 25.6.1998. It is further pointed out that the said trust had also written a letter to the Corporation for giving the land being Block No. 359 which was given by the said trust to the Corporation on rent and it was agreed that the said land along with superstructure shall be handed over to the said trust by the Corporation in lieu of another land being Block No. 384 (the land in question). It is the case of the Corporation that on 26.10.1998, possession of the land in question was already handed over to the Corporation by the trust and the Corporation had started construction after receiving possession. It is, therefore, contended that the land in question is shown under reservation in the draft development plan prepared by SUDA and, therefore, it is open for the Corporation to take possession by an agreement which was done in view of section 78 of the BPMC Act read with section 20(2) of the Gujarat Town Planning and Urban Development Act.

3. After hearing the learned Counsel for the respective parties, I am of the opinion that it is not necessary for me to go into the merits of the case in

view of the fact that the petitioners had given proposal to the Municipal Corporation, Surat and the same was considered by Standing Committee by passing a resolution no. 104 of 2001 dated 2.8.2001. Learned Counsel for the Municipal Corporation placed on record the said resolution. The said resolution is to the effect that if the petitioners establish their right as tenants, the Corporation shall pay compensation for the land in question at market rate with interest from the date of taking over possession till the rights of the petitioners are established. The petitioners are agreeable to the above resolution of Surat Municipal Corporation on condition that the Corporation shall also follow paras 3 and 4 of the proposal for settlement.

4. As far as para 3 is concerned, it goes without saying that the Gujarat Revenue Tribunal shall decide the claim of the petitioners as tenants independently and on the basis of the material placed before it and without in any manner being influenced by the present order.

5. With regard to para 4 of the proposal for settlement, I may say that it will be open for the petitioners or the concernedparty to request the Charity Commissioner to pass orders in pursuance of the arrangement arrived at between the petitioners and the Municipal Corporation.

6. In view of this, nothing further is required to be decided in this petition. This petition is, therefore, accordingly disposed of. Rule is discharged with no order as to costs. Civil Application also accordingly stands disposed of. Interim relief stands vacated.

(K.R.Vyas,J.)

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